

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JUL 10 1968

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner

v.

GEORGE PEARCE, d/b/a G. P. TRUCKING COMPANY,  
Respondent

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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No. 22,778

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v.

GEORGE PEARCE, d/b/a G. P. TRUCKING COMPANY,  
Respondent

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ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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ISSUES PRESENTED

1. Whether substantial evidence on the record as a whole supports the Board's finding that respondent threatened, coerced and restrained its employees, in violation of Section 8(a)(1) of the Act.

2. Whether substantial evidence on the record as a whole supports the Board's finding that respondent discharged employees Floyd Sims, Carl Reagan and William Crider because of their pro-union efforts, in violation of Section 8(a)(3) and (1) of the Act.



## STATEMENT OF THE CASE

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*),<sup>1</sup> to enforce its order issued on June 23, 1967, against respondent George Pearce, d/b/a G. P. Trucking Company. The Board's decision and order (R. 72-73, 33-52)<sup>2</sup> are reported at 165 NLRB No. 140. This Court has jurisdiction over the proceedings under Section 10(e) of the Act, the unfair labor practices having occurred within this judicial circuit. No jurisdictional issue is presented.

## I. THE BOARD'S FINDINGS OF FACT

The Board found that respondent Company, in opposing an organizational campaign by the Union,<sup>3</sup> violated Section 8(a)(1) of the Act by coercively interrogating employees about their union interests and activities, threatening employees with discharge and related reprisals if they chose union representation, promising employees higher wages and other economic benefits in order to induce them to reject unionization, and preparing and soliciting the signatures of employees to an anti-union petition. The Board also found that respondent Company violated Section 8(a)(3) and (1) of the Act by discharging employees Floyd Sims, Carl Reagan and

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<sup>1</sup>The pertinent statutory provisions are reprinted in Appendix A, *infra*, pp. 29-30.

<sup>2</sup>References to the pleadings, decision and order of the Board, and other formal papers reproduced as "Volume I, Pleadings", are designated "R." "Tr.", "G.C. Exh.", and "Resp. Exh." references are to the transcript of proceedings, the General Counsel's exhibits, and Respondent's exhibits, respectively. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

<sup>3</sup>Chauffeurs, Teamsters & Helpers, Local 431, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

William Crider because of their pro-union efforts. The facts upon which the Board's findings are based are summarized below.

**A. The Union attempts to organize the Company's employees;  
the Company responds with threats, coercion and restraint**

Respondent Company is engaged in the trucking business in Mendota, California. George Pearce is owner of the business and Delbert Williams is his dispatcher. (R. 34; Tr. 6, 227, 369, G.C. Exh. 1(e), p. 2.) During late January 1966,<sup>4</sup> the Union attempted to organize the Company's driver-employees. Pearce and Williams, in opposing the organizational effort, resorted to the following conduct:

*1. Dispatcher Williams coercively interrogates and threatens employees*

On January 31, employee Floyd Sims signed a union authorization card and, together with other employees, solicited the signatures of his co-workers (R. 34; Tr. 11-13, 53-55, 124, 128-131, 133-134, 185-186). Thereafter, on February 1 or 2, Dispatcher Williams telephoned his sister Phyllis Sims, the wife of Floyd Sims, and asked her whether Floyd was circulating union cards among the drivers (R. 34; Tr. 124, 343-344). Williams subsequently approached driver Sims and co-workers Carl Reagan, William Crider, Lonnie Chronister and Donald Millican at the Company's Mendota shop, and asked the employees whether they and other drivers had signed union cards (R. 34; Tr. 14-15, 55-57, 79-80, 131-132, 186, 195-196). During his interrogations, Williams admonished the employees that if they wanted a union they should "get out and get [a] union job"; that any driver who signed a union authorization card "would not have a job"; and that the Company, rather than permit the Teamsters to organize

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<sup>4</sup> All dates refer hereinafter to 1966.

its drivers, would “bring in a winery union” which would seek “considerably less” wages for the employees (R. 34; Tr. 14, 16, 56-57, 131-132).

Williams acknowledged before the Trial Examiner that in early February he had been informed that some of the Company’s drivers were soliciting signatures on union cards and that he interrogated various drivers as to whether they had signed such cards and, in particular, whether employees Sims and Millican were engaging in union solicitation (R. 34; Tr. 330-332, 364-366). Williams also acknowledged that employees interrogated by him during early February denied signing authorization cards, that he subsequently discovered they had “lied about” their pro-union activities, and that he then confronted them with this information (R. 35; Tr. 364-367).<sup>5</sup> Thus, Williams approached driver Millican and, in the presence of his co-workers, asked Millican why he “had lied to him about the Union”. Williams named the drivers who to his knowledge had not signed cards, and again asked Millican whether he had signed a card (R. 35; Tr. 198-200). Millican then admitted signing a card (Tr. 199).

*2. Owner Pearce promises employees economic benefits if they drop the Union; and threatens to sell his trucks if unionized*

During late February or early March, Pearce was advised by a Board agent that the Union had made a sufficient showing of interest to permit a Board-conducted election; Pearce then requested a pre-election hearing which was scheduled for March 15 (R. 35; Tr. 228-229). At about this time Pearce told driver Millican that “he had been doing some figuring, \* \* \* if everything went right, we would have a pretty sizeable Christmas

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<sup>5</sup>At about this time, Williams asked driver Crider if he “knew who had signed union cards”, and solicited the employee “to find out” and report the signers to him (R. 35; Tr. 134).



bonus at the end of the year, and \* \* \* that if it was insurance that we wanted \* \* \* he would get us the best insurance policy in the state” (R. 35; Tr. 203-204). Pearce then asked Millican if he “would be willing to drop the Union idea until March 1967” when the employees would have “a chance to vote on it again” (*ibid.*). Millican agreed to “go along with what the rest of [the drivers] wanted to do” (Tr. 204).

During early March, Pearce similarly told employee Sims, in the presence of drivers Millican and Babshoff, that “if the Union didn’t come in, it looked like all the drivers could have a nice bonus at the end of the year, and if the Union did come in he’d sell his trucks, all except one \* \* \* and get subhaulers to pull his trailers” (R. 35; Tr. 59). Pearce added that the Christmas bonus would be \$500 to \$600 (Tr. 59-60). Sims explained to Pearce that “all the guys that wanted the Union \* \* \* wanted a hospitalization plan and dental plan” which the Teamsters’ contract provided, “and that nobody wanted to lose their job over the Union” (Tr. 60). Pearce replied that “he’d buy a hospitalization plan for the guys if they wanted it” (R. 35; Tr. 61).

### *3. Dispatcher Williams threatens employees Sims and Reagan with discharge*

On March 5, Dispatcher Williams approached employee Reagan and stated, “I thought you said you didn’t sign a card” (R. 36; Tr. 16). Reagan apologized for previously denying that he had signed a card, and acknowledged his pro-union sentiments (Tr. 16). Williams then replied (R. 36; Tr. 16-17):

I told you if you want a union, you don’t stay around here, \* \* \* get out and get a union job. \* \* \* [I]f you feel that bad about the Union, \* \* \* [a]fter the day, take your truck to the yard and park it.

On the same day, Williams similarly questioned driver Sims about his union interests. Sims indicated that he “would vote for the Teamsters” (R. 36; Tr. 58). Williams then told the employee (Tr. 58), “if [he] felt like that, [he] could take [his] truck to the yard and park it, or else [he] could finish out the day” (Tr. 58). Williams informed Sims that he had told Reagan “the same thing” (*ibid.*).<sup>6</sup> Reagan and Sims understood Williams’ statements to mean that they were discharged; however, as shown below, Pearce informed the two employees later that day that they were not fired (R. 36; Tr. 17-18, 58, 61).

#### 4. *Owner Pearce conducts employee meetings and repeats his prior threats and promises*

At the close of work on March 5, Pearce conducted two or three meetings of assembled employees. He requested employees Sims and Reagan to attend one of the meetings. When the two employees informed Pearce that Williams had discharged them earlier that day, Pearce assured them that they were not fired and invited them to remain at the meeting. (R. 36; Tr. 18, 41, 61, 202, 275-278.)

Pearce then told the assembled drivers that he was opposed to the Union, and “if they were dissatisfied \* \* \* [he] was prepared to sell them a part of the business” (Tr. 275-277). Pearce also warned that he would sell his trucks before permitting unionization—unionization would cause him to “park” his trucks (R. 36; Tr. 201-203). Pearce, at the same time, proposed to the drivers that “he would like for [them] to hold off \* \* \* until March, 1967” on voting for the Union; that they “would be getting

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<sup>6</sup>Williams testified below that he “told those two guys \* \* \* that if they didn’t stop threatening drivers *and circulating cards*, then, they could park their trucks” (R. 36; Tr. 335-336) (emphasis added).

better bonuses and better wages"; that he would pay for insurance for the drivers; and that "at the end of the year he would sell [them the] tractors and lease the trailers to [them] \* \* \* and pay [them] a reasonable wage until the tractors were paid off". He added that "if everything went all right", they would get a Christmas bonus "anywhere from \$400 to \$700." (R. 36-37; Tr. 201-203, 138-139, 142, 186, 188.) Pearce summed up the meeting by stating (Tr. 140-144):

\* \* \* [I]t is all up to you. We know what we can and what we will have and what we do have. \* \* \* Think it over.

*5. Owner Pearce prepares an anti-union petition for the employees to sign, and again resorts to promises of benefit and threats*

On March 6, Pearce prepared the following petition for his employees to sign (R. 37; Tr. 232-233, 21-23, 63-65, 188, 203, G.C. Exh. 2):

\* \* \*

I am now and have been since January 1, 1966, employed as a truck driver by G. P. Trucking Co. and/or George Pearce Trucking Co. and do hereby state, regardless of any statement written or otherwise that I have made in the past, [sic] do not want the Teamsters Union or any other Union to bargain with my employer for me, or to represent me in any way whatsoever. Nor do I want to vote on this matter again before March 15, 1967, and only then if I so request it.

\* \* \*

Employees were asked by either Pearce or Williams to sign the petition (Tr. 21-23, 63-65, 188, 203). Pearce admittedly was present when 85 to 95 percent of the employees signed (Tr. 232-233). Driver Reagan, however, refused to sign the petition (Tr. 21-23). Driver Sims at first signed

and later scratched his signature off the document (Tr. 63-65, G.C. Exh. 2).<sup>7</sup>

On that same day, Pearce approached employee Reagan and asked him: "Carl, would you like to have a \$600 Christmas bonus if the Union is dropped \* \* \* until March 1967?" (R. 37; Tr. 19-20). Reagan did not answer, whereupon Pearce stated (Tr. 20):

\* \* \* Carl, don't think about anybody else. \* \* \* Don't think about the guys, they won't help you none. \* \* \* You take care of Carl Reagan and Carl Reagan's family.

In like vein, Pearce admonished employee Chronister shortly before the March 31 election (R. 37; Tr. 190): "We're still going to have an election. If you want the Union, go hunt yourself a job, and if you don't, go on and work here". Pearce also promised a number of employees that if they wanted group insurance, he would pay for it after July 1 (R. 37; Tr. 190, 265-267).

## B. The Company Discharges Employees Floyd Sims, Carl Reagan, And William Crider

### 1. *Floyd Sims*

Sims was first employed by the Company in 1959 (R. 40; Tr. 53). In late January, he signed a union authorization card and, a few days later, accompanied a number of his co-workers to the Union's hall where they also signed cards (R. 40; Tr. 53-54). On February 1 or 2, Dispatcher Williams asked Sims' wife whether the employee was circulating union cards among the drivers (R. 34; Tr. 124, 343-344). Shortly thereafter,

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<sup>7</sup>Pearce presented the petition at the pre-election hearing held on March 15. The Board representative refused, however, to accept the petition, whereupon Pearce withdrew his request for a hearing and the election was held on March 31 (R. 37; Tr. 232-233).



Williams questioned Sims about “passing out authorization cards”. Sims denied engaging in such activity, and Williams warned the employee that “\* \* \* it was a non-union job \* \* \* and it was going to stay non-union”; that if Sims and his fellow-employees “wanted to work at a union job, [they] could go and get a job at a union place”; and “that any driver [who] did sign an authorization card for the Union would not have a job”. (R. 40; Tr. 53-56, *supra*, pp. 3-4.) On March 5, Williams again interrogated Sims about his suspected union sympathies. Sims then admitted that he “would vote for the Teamsters” (Tr. 58). As shown above (*supra*, p. 6), Williams threatened to discharge the employee because of this reason.

On the following day, March 6, Williams asked Sims to sign the company-prepared anti-union petition (*supra*, p. 7); Williams explained to the employee that “most \* \* \* of the other guys had signed already”, and Sims agreed to “go along with the majority” (R. 40; Tr. 63-66). Sims, however, later discovered that co-worker Reagan had not signed and he advised Pearce that he “wanted to erase [his] name \* \* \*” from the petition (Tr. 65-67). Pearce asked the employee why he had changed his mind, and Sims replied that he “wanted no part in keeping the Union out \* \* \*” (Tr. 65). Pearce informed the employee that the petition was at the Company’s Mendota yard and the employee could remove his signature there. Sims and Pearce then engaged in a heated exchange, and the employee, “upset” over the incident, challenged Pearce to a fight. Pearce, however, refused and told Sims to “take a couple of days off and cool off”. (Tr. 67.) Later that day, Sims returned to the Company’s yard and removed his signature (R. 40; Tr. 65-67, G.C. Exh. 2). There, Dispatcher Williams told the employee that he had been instructed by Pearce that



Sims "could be off a couple of days" (Tr. 67). Sims told Williams that he would call him on Tuesday night, March 8, to find out when he was to return to work (R. 40; Tr. 67-68).

On Tuesday, March 8, Sims called Williams at his home, and asked when and where he was to resume work. Williams told the employee: "We don't need you tomorrow. Just take another day off. Call tomorrow night." (R. 41; Tr. 68.) As instructed, Sims called Williams again on Wednesday evening, March 9. Williams then told the employee that he "wasn't \* \* \* sure whether they needed [him] the next day or not, and [Williams] would call him on \* \* \* Thursday morning \* \* \* or let [him] know" (R. 40; Tr. 69). Sims, having heard nothing from Williams during Thursday, March 10, went to Williams' home that evening with his wife (R. 41; Tr. 69-70). There, Sims asked Williams "if he was going to need [him] the next day" and Williams replied that "he didn't think so", "\* \* \* \* wait a few days and see what comes out"<sup>8</sup> (Tr. 70-71). Thereafter, Pearce sent Sims a letter, dated March 10 and postmarked March 13, which stated (R. 41; Tr. 71-74, G.C. Exhs. 5 and 6):

\* \* \*

On the 14th of Aug. 1965 you totally wreaked [sic] one of my trucks. The California Highway Patrol at the time could see no reason for the accident other than excessive speed. Approximately a month and a half later, I put you back to work on a trial basis, but quite frankly, I was elated on the afternoon of March the 6th, 1966, when you told me and my dispatcher that you were leaving our employ to go to another job because for what it is worth

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<sup>8</sup>Williams testified below that he had a conversation with Sims "a couple or three days \* \* \* after he took off"; that the employee asked him "when am I going to go back to work"; and that Williams replied: "\* \* \* as far as I know, you are not going back to work any time" (Tr. 345).

to you, I think you are going to have more accidents in the near future unless you start driving closer to the legal posted speed limits.

\* \* \*

Sims, as shown above, was not permitted to return to work after March 6.

## 2. *Carl Reagan*

Reagan worked for the Company from July to December 1963 and from July 1964 to March 10, 1966, when he was discharged (R. 45; Tr. 10-11). On January 31, he accompanied Sims and other employees to the Union's hall where he signed an authorization card (R. 43; Tr. 11-12). Reagan, like Sims (*supra*, pp. 8-9), was subsequently interrogated by Dispatcher Williams about signing a union card, and told to "get out and get another job" if he wanted union representation (R. 43; Tr. 14-16). Reagan then denied signing a union card (Tr. 15). Thereafter, on March 5, Reagan admitted to Williams that he had signed a card and Williams threatened him, as well as Sims, with discharge for this reason (*supra*, p. 9). Later that day, Reagan attended a meeting of drivers conducted by Pearce in an effort to discourage them from voting for the Union (*supra*, p. 6). During that meeting, Pearce, *inter alia*, made "offers to [the drivers] about selling [them] his tractors \* \* \* leasing his trailers to them", and he "could take care of the maintenance and repairs" (R. 43; Tr. 17-18). Reagan spoke up and told Pearce that his "tractor would need a major overhaul, that it would cost too much, that it was half worn out, [and that he] didn't want" it (Tr. 18). Pearce—admittedly "offended by this remark" (Tr. 278-279)<sup>9</sup>—referred profanely to a Teamsters official and exclaimed that "he did not want the Union" (R. 43; Tr. 17-18).

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<sup>9</sup>Pearce concededly regarded Reagan's "attitude" as "arrogant" (Tr. 279).

On the following day, March 6, Reagan adamantly refused to sign the company-prepared anti-union petition (R. 43; Tr. 20-23, *supra*, p. 7). Later that day, he had heard that his co-workers were told by management that “everybody signed it”, and he asked Pearce to let him see it because he “wanted to make sure [his] signature wasn’t on it” (R. 43; Tr. 23).

At the close of work on March 10, Williams informed Reagan that the truck assigned to him was to be sent to the shop for repair of oil leaks. Reagan asserted that the leaks were not serious, but Williams insisted on sending the truck in for repairs and instructed the driver to “take off [the next day] and call him.” (R. 44; Tr. 25-26.) On March 11 and 12, when Reagan telephoned Williams to find out whether repair of his truck had been completed, Williams stated that the truck was “still \* \* \* at the yard” and had not yet been sent to the repair shop (R. 44; Tr. 26-27). On March 13, Reagan sought out Williams and asked him whether he was fired; Williams told the employee: “No sir, you are not fired. You still got your vote with the union when it comes up for election” (R. 44; Tr. 27-28). Reagan, however, observed another employee driving his truck and confronted Williams with this information. Williams then stated: “He didn’t need any drivers right then \* \* \* [they] got all the drivers [they] needed.” (R. 44; Tr. 28-29.)<sup>10</sup>

On the following day, March 14, Reagan received the following letter from Pearce (R. 45; Tr. 29-32, G.C. Exhs. 3 and 4):

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<sup>10</sup>Pearce testified below that on March 9 he instructed Williams to fire Reagan that evening but Williams “didn’t tell him that he was fired” because, assertedly, “he was afraid that [Reagan] would beat him up” (R. 44, n. 12; Tr. 287-288). Pearce added that this “is the reason why Reagan was inconvenienced three or four days” (*ibid.*).

As you know, I have warned you no less then [sic] four or five times in the past six months about excessive speed, over and above the legal posted speed limits. To say nothing about what excessive speed costs in equipment wear and tear, the local police in the communities where we operate are concerned about your excessive speed. The California Highway Patrol are concerned about your excessive speed. My insurance company is more then [sic] concerned, it is on the verge of endorsing [sic] you off of my policy for excessive speed and they are on the verge of cancelling my whole policy over excessive speed. So for this reason, effective as of this date, I have no choice but to terminate your service with my company.<sup>11</sup>

Pearce, however, testified below (R. 45; Tr. 238-239):

\* \* \*

In fact, I think Mr. Reagan would still be working [for the Company] today if he hadn't taken the position immediately before he was fired that he was going to take over the Company and run the Company as he saw fit. That was his general attitude.

### 3. *William Crider*

Crider worked for the Company during 1965, resigned, was later rehired and worked until April 27, 1966 (R. 48, 50, n. 32; Tr. 127-128, 156). He signed a union authorization card in early February, and was subsequently questioned about his union sentiments by Dispatcher Williams (R. 48; Tr. 130-133). Crider, in answer to Williams' interrogation, denied signing a union card (Tr. 131, 136).<sup>12</sup> He subsequently attended the March 5 anti-union meeting conducted by Pearce. Although Crider initially supported the unionization effort, he decided on March 5 to "go along

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<sup>11</sup>The above letter, like the one sent to driver Sims (*supra*, p. 10), was dated March 10, although not received by Reagan until March 14 (*ibid.*).

<sup>12</sup>As noted above (*supra*, p. 4, n. 5), Williams solicited Crider to report to him the names of those drivers who had signed union cards.



with” Pearce and give him an opportunity to make good on his promises of increased benefits and bonuses. (R. 48; Tr. 137-144, 153-154.) On March 6, he signed the Company’s anti-union petition (*supra*, p. 7) and he subsequently attempted to persuade his co-workers to vote against the Union (R. 48; Tr. 144-146, 153-154).

During this latter period, Crider enjoyed a cordial relationship with Pearce (Tr. 154), and on the same day that driver Sims was laid off (*supra*, p. 9), Pearce assigned Crider to Sims’ truck. Crider had previously driven a six-cylinder vehicle and Sims drove an eight-cylinder vehicle; Crider considered this assignment a “promotion” since the larger vehicle enabled him to make “more money”. (R. 48; Tr. 148-151.) Pearce told the employee, “keep your nose clean” and the “truck is yours” (Tr. 151).

Shortly thereafter, Crider came upon information which led him to believe that Pearce would not keep his promises of March 5 and that, despite the fact the drivers were going to vote against the Union, “our trucks \* \* \* were being sold from under us” (R. 48; Tr. 154-156). Crider confronted Williams with this information; he told the dispatcher: “Even though we are not going to go Union, he’s going to sell the trucks from under us” (Tr. 156). Williams replied, “I don’t know, Jim \* \* \* I don’t know” (Tr. 157). Crider then urged his co-workers to support the Union (R. 48; Tr. 157).

Pearce admittedly did not learn of Crider’s pro-union efforts until sometime after the March 31 Board-election (R. 48; Tr. 244-245).<sup>13</sup>

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<sup>13</sup>During the March 31 election, nine votes were cast for the Union and nine against it; there were also two challenged ballots including that of driver Reagan. The Regional Director on May 27 deferred ruling on his ballot pending the “outcome of this proceeding” (Tr. 274-275).



Thereafter, on April 15, Charles Chastian, underwriter for respondent's insurance carrier, sent Pearce a letter advising him to place drivers Crider, Sims and others on "probationary status" in order "to improve the accident record" of the Company (R. 48; Tr. 384-385, 388-407, G.C. Exhs. 9, 10, 11). Six days later, on April 21, Chastian wrote Pearce, advising him that drivers Reagan and Crider should be restricted from its insurance policy (Tr. 393-394, G.C. Exh. 9). Chastian explained that Crider and Reagan were restricted from the policy on April 21<sup>14</sup> because—between April 15 and 21—Chastian received a telephone call from James Mueller, the insurance company's field manager, advising him that "Pearce feels James Crider's and Carl Reagan's driving [is] not safe" (Tr. 388-407, G.C. Exhs. 9, 10, 11). Chastian decided "to request [a] restricted endorsement for James Crider and Carl Reagan on the basis of" this information (Tr. 402-403).<sup>15</sup>

Thereafter, on April 28, Crider's name was deleted from the list of employees scheduled to work that day. Crider "assumed" that this was because "the season was over";<sup>16</sup> however, he later heard a rumor that he had been fired (Tr. 159-160). He then called Dispatcher Williams and asked when he was "going back to work." Williams replied (Tr. 161):

Well, you are not. \* \* \* George [Pearce] has a letter from the insurance company saying to get rid of you \* \* \* for too many traffic violations.

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<sup>14</sup>As shown *supra*, p. 13, Reagan had been discharged earlier on March 10.

<sup>15</sup>On cross-examination of Chastian, Company counsel asked: " \* \* \* did Mr. Mueller ever tell you that Mr. Pearce had asked to have either James Crider or Carl Reagan restricted and endorsed off the policy?" The witness answered: "Well, that was the idea that came across to me from the telephone call—that Mr. Pearce was advising this for the policy" (Tr. 408).

<sup>16</sup>Driver Crider was hauling beets at the time. At the end of the season, there was a three to six week period when there were no beets to haul (Tr. 160).

Crider explained that he had only three traffic tickets, whereupon Williams replied, "George got the letter. You have got to go to Sacramento and get it straightened out \* \* \* and see George about getting your job back" (R. 49; Tr. 161). Crider thereafter wrote Pearce but received no reply (R. 49; Tr. 161). Pearce acknowledged before the Examiner that he considered Crider "good enough to keep" and "good enough to take back if the insurance company will take him back" (R. 49; Tr. 298-299).

## II. THE BOARD'S CONCLUSIONS AND ORDER

Upon the foregoing facts, the Board, in agreement with the Trial Examiner, concluded that the Company had violated Section 8(a)(1) of the Act by interrogating employees about their union interests, promising employees higher wages and other economic benefits in order to induce them to reject unionization, threatening to sell its trucks and use sub-haulers if unionization occurred, and preparing and circulating an anti-union petition. The Board further concluded that the Company violated Section 8(a)(3) and (1) of the Act by discharging employees Sims, Reagan and Crider because of their union activities.

The Board's order requires the Company to cease and desist from the unfair labor practices found and from in any other manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights. Affirmatively, the Company is required to offer reinstatement to employees Sims, Reagan and Crider, to make them whole for any loss of pay they may have suffered by reason of the Company's discrimination against them, and to post appropriate notices (R. 50-52, 72-73).

## ARGUMENT

## I.

**SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY THREATENED, COERCED AND RESTRAINED ITS EMPLOYEES, IN VIOLATION OF SECTION 8(a)(1) OF THE ACT**

The evidence summarized in the Statement, *supra*, pp. 3-16, clearly shows that the Company's attitude toward its employees' exercise of their organizational rights was one of adamant hostility. From the beginning of the Union's organizational campaign in late January until the March 31 election, Company Dispatcher Williams repeatedly admonished employees that if they wanted union representation, they should "get out and get a union job", that any driver who signed a union authorization card "would not have a job", and that "if you want a union, you don't stay around here" (*supra*, pp. 3-5). Indeed, when employees Sims and Reagan admitted their pro-union sentiments to Dispatcher Williams, he threatened to fire them for this reason (*supra*, p. 6). Owner Pearce similarly instructed employees: "If you want the Union, go hunt yourself a job, and if you don't go on and work here" (*supra*, p. 8). Pearce also threatened employees that "if the Union did come in he'd sell his trucks \* \* \* and get subhaulers to pull his trailers" (*supra*, p. 5). Such open threats are clearly violative of Section 8(a)(1) of the Act. See, e.g., *N.L.R.B. v. Geigy Company*, 211 F.2d 553, 557 (C.A. 9), cert. denied, 348 U.S. 821; *N.L.R.B. v. Idaho Egg Producers, Inc.*, 229 F.2d 821, 823 (C.A. 9); *N.L.R.B. v. West Coast Casket Co.*, 205 F.2d 902, 904-905 (C.A. 9); *N.L.R.B. v. V. C. Britton Co.*, 352 F.2d 797, 798 (C.A. 9); *N.L.R.B. v. Ambrose Distributing Co.*, 358 F.2d 319, 320 (C.A. 9), cert. denied, 385 U.S. 838.

At the same time, Dispatcher Williams repeatedly quizzed employees whether they and their co-workers had signed union cards or were engaging in union solicitation (*supra*, pp. 3-5). Having been threatened by Williams with discharge if they supported the Union, the employees understandably denied engaging in such activities. Williams, however, persisted in his effort to find out which drivers favored the Union.<sup>17</sup> Thereafter, when Williams discovered that certain employees had “lied to him about the Union”, he pointedly confronted them with this information and again interrogated them (*supra*, p. 4). As shown above (*supra*, pp. 5-6), employees Sims and Reagan finally confessed to Williams their union support, and were then instructed “to park their trucks” because “if you want a union you don’t stay around here.” Such interrogations, under settled principles, violate Section 8(a)(1) of the Act because they have a “natural tendency to instill in the minds of employees fear of discrimination on the basis of the information [sought]”. *N.L.R.B. v. West Coast Casket Co.*, *supra*, 205 F.2d at 904; see also, *N.L.R.B. v. Idaho Egg Producers, Inc.*, *supra*, 229 F.2d at 822-823; *Daniel Construction Co. v. N.L.R.B.*, 341 F.2d 805, 812 (C.A. 4), cert. denied, 382 U.S. 831; *Martin Sprocket & Gear Co. v. N.L.R.B.*, 329 F.2d 417, 420 (C.A. 5).

Pearce, in a further effort to defeat the unionization of his drivers, repeatedly offered the employees higher wages, a sizeable Christmas bonus, and paid hospitalization benefits if they abandoned or, at least, postponed for one year their right to vote for union representation (*supra*, pp. 4-7). At the same time, Pearce and Williams threatened employees with discharge, sale of the Company’s trucks, and other dire consequences if they rejected

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<sup>17</sup>As driver Crider related (*supra*, p. 4 n. 5), Williams asked him if he “knew who had signed union cards” and solicited the employee “to find out” and report the signers to him.



management's proposals (*supra*, pp. 3-8). "[A]llurements to force abandonment of the Union" are clearly violative of the employees' Section 7 rights. *N.L.R.B. v. Parma Water Lifter Co.*, 211 F.2d 258, 262 (C.A. 9), cert. denied, 348 U.S. 829 (and cases cited therein); *N.L.R.B. v. Luisi Truck Lines*, 384 F.2d 842, 845 (C.A. 9).

Finally, Pearce—after having offered his employees various economic benefits in lieu of union representation—attempted to consummate the deal by preparing and circulating for their signature a petition which stated that they “do not want the Teamsters Union or any other Union \* \* \* to represent [them] in any way whatsoever” (*supra*, pp. 7-8). Indeed, in an effort to prevent the employees from even having the right to confirm or deny their asserted disclaimer of all union representation at a Board-conducted election, Pearce added to his anti-union petition the language: “Nor do I want to vote on this matter again before March 15, 1967, and only then if I so request it” (*supra*, p. 7). The employees were thus required to commit themselves, under the close observation of Company representatives, to a choice between unionization and no unionization. Such employer sponsored petitions—accompanied by threats and other coercive conduct—are patently designed to pressure rank-and-file workers into exposing and renouncing their union interests prior to an election, and, therefore, have been consistently held to have a tendency to interfere with the employees' Section 7 right to choose freely in a Board election whether or not they want union representation. See, e.g., *N.L.R.B. v. V. C. Britton Co.*, 352 F.2d 797 (C.A. 9); *N.L.R.B. v. California Compress Co.*, 274 F.2d 104, 106 (C.A. 9); *N.L.R.B. v. S. & H. Grossinger's, Inc.*, 372 F.2d 26, 29 (C.A. 2); *N.L.R.B. v. Movie Star, Inc.*, 361 F.2d 346, 348-349 (C.A. 5); *Edward Fields, Inc. v. N.L.R.B.*, 325 F.2d 754, 760 (C.A. 2).



In sum, substantial evidence on this record supports the Board's finding that the Company threatened, coerced and restrained its employees, in violation of Section 8(a)(1) of the Act.<sup>18</sup>

## II.

### **SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY DISCHARGED EMPLOYEES SIMS, REAGAN AND CRIDER BECAUSE OF THEIR PRO-UNION ACTIVITIES, IN VIOLATION OF SECTION 8(a)(3) AND (1) OF THE ACT**

The Company, as shown above, was strongly opposed to the unionization of its employees and took immediate steps to forestall and frustrate their organizing effort. The discharge and layoff of known union protagonists is a classic method of undermining an organization effort. The credited evidence, summarized *supra*, pp. 8-16, demonstrates that the employer's treatment of employees Sims, Reagan and Crider was of such a nature.

#### **A. Floyd Sims**

Sims was hired by the Company in 1959. In late January 1966, he signed a union authorization card and was instrumental in getting his co-workers to sign similar cards. On February 1 or 2, Dispatcher Williams telephoned his sister, Sims' wife, to find out whether the employee was circulating union cards among the drivers. Thereafter, Williams questioned

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<sup>18</sup>Before the Board, respondent attacked the various credibility resolutions made by the Trial Examiner. The Examiner, however, has carefully indicated in his decision the reasons for his crediting certain witnesses and not others (R. 38-40). The Board, after reviewing the record, adopted these findings (R. 72). It is settled that such credibility determinations are peculiarly within the province of the Board and the Trial Examiner, and should rarely be disturbed on review. See, e.g., *N.L.R.B. v. Walton Mfg. Co.*, 369 U.S. 404, 408; *N.L.R.B. v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659-660; *N.L.R.B. v. Local 776, IATSE*, 303 F.2d 513, 518 (C.A. 9), cert. denied, 371 U.S. 826; *N.L.R.B. v. Stanislaus Implement & Hardware Co.*, 226 F.2d 377, 381 (C.A. 9).

the employee about his suspected union activities. Sims denied engaging in the organizational effort, and Williams admonished the employee that the Company “was going to stay non-union” and drivers who supported the Union “would not have a job” (*supra*, pp. 8-9).

On March 5, Williams again interrogated Sims about his suspected pro-union efforts. This time Sims admitted that he “would vote for the Teamsters”, and Williams then threatened to discharge the employee for this reason. On the following day, March 6, Sims—after having signed the company-prepared anti-union petition—changed his mind and told Pearce that he “wanted to erase [his] name” because he “wanted no part in keeping the Union out” (*supra*, p. 9). Pearce and Sims then engaged in a heated exchange and the employee was told to “take a few days off to cool off” (*supra*, p. 9).<sup>19</sup>

On March 8, Sims called Williams and asked when he could return to work; Williams told the employee to “take another day off” and “call tomorrow.” On March 9, Sims again called Williams; Williams told the employee that he “wasn’t \* \* \* sure whether they needed” him and “would call him” the next day. On Thursday March 10, Sims, accompanied by his wife, went to Williams’ home and again asked to return to work. Williams admittedly told the employee (Tr. 344-345): “\* \* \* you are not going back to work any time.” Finally, on March 14, Sims received a letter from Pearce, dated March 10 and postmarked March 13, informing the employee that he had damaged a company truck approximately seven months earlier,

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<sup>19</sup> Although Sims then challenged Pearce to a fight, the Company does not contend that he was discharged for this reason. As Company counsel stated before the Trial Examiner (Tr. 209): “We have no contention that Sims was discharged for any reason.”

that he had been put back to work on a “trial basis” some five months earlier, and that Pearce “was elated on the afternoon of March the 6th 1966” when Sims allegedly “told [Pearce] and [his] dispatcher” that he was “leaving \* \* \* to go to another job \* \* \*.” (*supra*, pp. 10-11.)

The Board rejected the Company’s assertion that Sims had quit on March 6 to take another job, and instead found that Sims’ March 6 layoff was converted into a discharge on March 8 because of the employee’s known union support. As the Examiner found (R. 42): “\* \* \* I do not credit the testimony of Pearce and Williams that Sims told them on March 4 and 6 that he had another job and was quitting. There is nothing in the record to show that he received any job offers on or before March 6. \* \* \* If Sims had quit for another job, it is unlikely that he would have sought for three days to return to work \* \* \* [or that] Williams would have made no reference to a resignation \* \* \* and would finally have stated that Sims would not be returned to work \* \* \*”, as Williams admitted. Moreover, as the Examiner further found (R. 43): “This view is buttressed by the very fact that the [March 10] letter was sent, since it was an unnecessary, and indeed somewhat unusual communication, to an employee who had quit.” Under the circumstances, the Examiner’s credibility resolutions, adopted by the Board, are entitled to affirmance since there has been no showing made here that management’s discredited denials could not in reason be disbelieved or that the credited testimony is inherently improbable. See, *N.L.R.B. v. Warrensburg Board & Paper Corp.*, 340 F.2d 920, 922 (C.A. 2); *Shattuck Denn Mining Corp. v. N.L.R.B.*, 362 F.2d 466, 469-470 (C.A. 9); and cases cited *supra*, p. 20, n. 18.



In sum, management's anti-union animus, its unlawful interrogation of Sims accompanied by repeated threats to discharge him for engaging in pro-union activities, the employee's subsequent refusal to sign the anti-union petition, and the obviously pretextual reason given for his termination, all furnish ample support for the Board's finding that Sims was discriminatorily discharged, in violation of Section 8(a)(3) and (1) of the Act. See, e.g., *Aeronca Mfg. Co. v. N.L.R.B.*, 385 F.2d 724 (C.A. 9); *N.L.R.B. v. Harrah's Club*, 362 F.2d 425, 428-430 (C.A. 9), cert. denied, 386 U.S. 915; *Shattuck Denn Mining Corp. v. N.L.R.B.*, 362 F.2d 466, 470 (C.A. 9); *N.L.R.B. v. Victory Plating Works, Inc.*, 325 F.2d 92, 93 (C.A. 9); *N.L.R.B. v. Idaho Potato Processors, Inc.*, 322 F.2d 573, 575 (C.A. 9); *N.L.R.B. v. West Coast Casket Co., Inc.*, 205 F.2d 902, 907 (C.A. 9).

### B. Carl Reagan

The Board also found that driver Reagan was discharged on March 10 because of his union partisanship. The credited evidence, summarized above, amply supports this finding. Reagan worked for the Company from July to December 1963 and from July 1964 to March 10, 1966. Reagan, like Sims, signed a union authorization card during late January, was subsequently interrogated by Dispatcher Williams about his suspected union sympathies, and told to "get out and get another job" if he wanted union representation. Reagan at first denied signing a card. However, on March 5, the employee finally admitted to Williams that he had signed a card and was promptly threatened with discharge for this reason. Later that same day, Reagan spoke up at Pearce's anti-union meeting, indicating his opposition to management's proposals in lieu of unionization. Pearce was admittedly offended at the employee's rejection of his proposition. On the following day, March 6, Reagan refused to sign the Company's anti-union



petition and—after having heard that his co-workers were told by management that “everybody signed it”—asked Pearce to let him see the petition “to make sure [his] signature wasn’t on it.” (*Supra*, pp. 11-12.)

Four days later, on March 10, Williams told the employee that his truck was in need of repairs and instructed the driver to take off the next day. Reagan protested that his truck did not need repair. Thereafter, on March 11 and 12, when Reagan inquired of Williams whether the vehicle had been repaired, he was told that the truck was “still \* \* \* at the yard.” Reagan, on March 13, asked Williams whether he was fired; the dispatcher assured the employee: “\* \* \* you are not fired. You still get your vote with the Union when it comes up for election.” Reagan, however, then observed another employee driving his vehicle and confronted Williams with this information. Williams then stated that he “didn’t need any drivers right then \* \* \* [they] got all the drivers [they] needed.” Finally, on March 14, Reagan received a letter from Pearce, dated March 10, advising him that “effective as of this date” he was terminated because of driving at “excessive speed”, and the Company’s insurance carrier “is on the verge of endorseing [sic] you off my policy for excessive speed.” (*Supra*, pp. 12-13.)

At the hearing below, Pearce retracted the reason for discharge emphasized in his March 10 letter to the employee—i.e., that the insurance company was “on the verge of [endorsing Reagan] off [the] policy for excessive speed” (R. 45; Tr. 290-291).<sup>20</sup> Indeed, as shown above (*supra*,

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<sup>20</sup>Pearce admittedly signed the insurance company’s endorsement excluding Pearce from its policy in late April, long after the employee had been terminated (Tr. 290-291, Resp. Exhs. 3 and 4). He testified that the “exclusion didn’t have any bearing on me firing him, because he was fired a month before \* \* \* or thereabouts”

p. 15), the insurance company's underwriter would not have excluded Reagan from its policy but for Pearce's advice to his agent (R. 46). Pearce again shifted his asserted reason for discharging Reagan, stating that "Reagan was discharged because of his rank insubordination \* \* \* and particularly because of his traffic violations \* \* \*" (R. 47; G.C. Exh. 1(g), p. 3). As for the "traffic violations", Reagan had not received a traffic ticket after October or November 1965 (R. 47; Tr. 34), and Pearce permitted Reagan to continue working after the season resumed in early 1966. And as for the employee's "rank insubordination," Pearce acknowledged below that Reagan was considered "arrogant" because he refused to go along with Pearce's March 5 proposal to sell the employees their trucks as an alternative to unionization (R. 45; Tr. 238-239, 278-279).

In view of the Company's anti-union animus, its coercive interrogations of and threats to Reagan and other employees, Reagan's refusal to sign the company-prepared petition or go along with Pearce in keeping the Union out, and the pretextual and shifting reasons asserted for discharging the employee, the Board reasonably found that Reagan was also discharged because of his union interests. See cases cited *supra*, p. 23.

### C. William Crider

Crider worked for the Company during 1965, resigned, was later rehired, and worked until April 27, 1966 (*supra*, pp. 13-16). Although Crider signed a union authorization card during early February, Pearce

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(Tr. 291). Pearce also acknowledged that he did not receive any communication from the insurance company placing Reagan on probationary status before he fired him (R. 45-45; Tr. 290, 293, *supra*, p. 15). In fact, as the Company's insurance underwriter testified (Tr. 403-404), he looked into Reagan's driving record on April 15 and then decided not to place Reagan on probationary status.

admittedly (Tr. 244) did not become aware of the employee's pro-union efforts until after the March 31 Board-conducted election.<sup>21</sup> Thus, prior to this time, Crider had denied to Williams that he had signed a union card, signed the Company's anti-union petition, and made known to his co-workers his view that Pearce should be given an opportunity to make good on his March 5 promises of increased benefits if the employees rejected the Union (*supra*, p. 14). During this period, Crider enjoyed a cordial relationship with Pearce, received a "promotion" despite prior traffic citations, and was told by Pearce that he had "done a good job" (R. 48-49; Tr. 148-151).

Crider, however, subsequently came upon information which caused him to believe that Pearce planned to renege on his March 5 promises. As the employee stated to Dispatcher Williams: "Even though we are not going to go Union, he's going to sell the trucks from under us" (*supra*, p. 14). Williams answered: "I don't know, Jim \* \* \* I don't know" (*ibid.*). Crider thereafter campaigned for the Union.

On April 28, Crider's name was deleted from the list of employees scheduled to work that day. The employee at first thought that this was because the season had ended; he later heard a rumor that he had been fired. Crider then called Williams and was advised that Pearce "has a letter from the insurance company saying to get rid of you \* \* \* for too many traffic violations" (*supra*, p. 15). Crider explained that he had only three violations, whereupon Williams instructed the employee to "see George [Pearce] about getting your job back" (*supra*, p. 16). Crider thereafter wrote Pearce but received no reply.

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<sup>21</sup>As shown (*supra*, p. 14), on March 31 nine votes were cast for the Union, nine against it, and two ballots were challenged.

Before the Board, Pearce testified that he “discharged Mr. Crider when [he] got the notice that he was excluded from the insurance policy” (Tr. 245). Pearce further testified that he “considered [Crider] good enough to keep” and “good enough to take back if the insurance company will take him back” (Tr. 298-299). However, as shown above (*supra*, p. 15), Crider—like Reagan—was excluded from the insurance policy at Pearce’s behest. Indeed, Pearce shifted from this asserted reason for discharge to the employee’s “general attitude when he was testifying” before the Examiner. As Pearce stated (Tr. 299-300)

\* \* \* I feel with the attitude that he seemed to have here yesterday, that he might not drive the way he should. \* \* \*  
Just his general attitude when he was testifying.

Pearce, although characterizing the employee’s testimony as “lies”, was nevertheless “willing to reemploy him” “If that is what it takes to satisfy him and you people \* \* \*” (Tr. 300).

Under the circumstances, the Board reasonably found that Crider, like Sims and Reagan, was discriminatorily discharged (see cases cited *supra*, p. 23).



## CONCLUSION

For the foregoing reasons, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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## APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

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 RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

## UNFAIR LABOR PRACTICES

Sec. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; \* \* \*

\* \* \*

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: \* \* \*

## PREVENTION OF UNFAIR LABOR PRACTICES

[Sec. 10](e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the

court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record . . . . Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the . . . Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.